IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1155 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
RAMESHJI VASNAJI BHIL (MAJI RANA) & ANR

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Appearance :
MR KC SHAH APP for Appellant
None for Respondents : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 15/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. Heard learned APP Mr.K.C.Shah for the appellant – State at length and learned APP has apprised us with the evidence recorded and documents produced during trial.

2. The State has preferred this appeal against the judgment and order passed by Additional Sessions Judge, 2nd Fast Track Court, Banaskantha at Deesa in Sessions Case No.68/2000 whereby the present respondent came to be acquitted for the charges levelled against him under Sections 279, 307, 353, 186, 341 read with Section 114 of the Indian Penal Code.

3. The brief facts reveal that at the relevant juncture i.e. on 29.07.1999, complainant was

serving as P.I. in LCB at Palanpur. He received information from concerned DSP of Banaskantha that on that day at about 20.40 hours one matador bearing No.GJ-8-T-1073 was to come from Rajasthan along with prohibited liquor through Datiwada road. The complainant was also instructed to take necessary action to cordon the road and apprehend the prohibited liquor. So the complainant was to call the panchas and along with the police party reached at village Vagharod in official vehicle at 22.00 hours and waited for the concerned matador. At about 22.00 hours, such matador appeared from Datiwada and complainant attempted to halt the said matador, but the driver of the matador did not stop, instead the bottles of illegal liquor were thrown on the police and the official vehicle. So the complainant and police party chased the said matador and when this vehicle moved towards Deesa, complainant informed Deesa Police Station through

wireless message. The complainant also fired upon matador. First fire did not bring any result, while on second fire stopped the matador. In firing, one person sitting in the matador was injured on left side of the body and was thrown out of the matador. Other persons sitting in the matador came out of the vehicle and started to running helter-skelter. The name of the injured person was asked, he stated that his name was Raju Moti and he was in drunken condition at that juncture. He further stated that the name of the driver of vehicle was Firdosh and other person was Ramesh Vasnaji, who occupied matador. Then police brought these Raju Moti and Ramesh Vasnaji in Government hospital at Deesa and during treatment injured Raju Moti had expired and the complaint came to be filed by P.I. Shri Chauhan in this respect for the abovesaid charges against the two accused i.e. Ramesh Vasnaji and Firdoshkhan. A charge-sheet, ultimately, came to be filed

and case was committed. Vide Ex.16, a charge was framed. Accused pleaded not guilty and hence the prosecution examined 20 witnesses in oral testimonial collection. The prosecution, as well, produced certain documents on record. Thereafter, the trial Court recorded statements of the accused under Section 313 of the Criminal Procedure Code wherein their defence was of total denial. After hearing the prosecution as well as the defence, the learned trial Judge was pleased to acquit both the accused and hence this appeal.

4. We have carefully gone through the evidence recorded by the trial Court as well as the reasoning given for the acquittal. The learned trial Judge in paragraphs – 10 to 15 recorded his reasons for acquitting the accused for the charges levelled against them. The learned trial Judge has noted that the independent witnesses i.e. Panch – Raghnathbhai Shankarji, P.W.6 at Ex.29 did

not support the theory of the prosecution that the accused Firdoshkhan was driving the said matador rashly and negligently nor it could be established by the prosecution through the evidence of these independent witnesses that the said matador was driven by accused No.2 and No.2 only. It is further noted by the trial Judge that second panch – Bhalchandbhai Laxmanbhai, P.W.10 is examined at Ex.41 as an independent witness. He stated in his deposition that he could not recognize and identify the driver of the matador and the person who escaped and ran away from the spot in injured condition. The learned trial Judge has observed that in the evidence though this panch stated that the vehicle was driven with full speed, but not rashly and negligently nor it could be established from the evidence of any of the panchas that the injured gave his name as Raju Moti and gave names of other two persons, who escaped from the spot. The learned trial Judge has also

recorded dying declaration of Raju Moti produced on record at Ex.38 and has observed that no medical certificate was obtained about the conscious state of mind of the deceased Raju Moti, while giving dying declaration at Ex.38. The learned trial Judge did not place reliance on the dying declaration at Ex.38 for the reasons that firstly no mention is made as to whether any relatives of deceased Raju Moti were present and that the said dying declaration was not recorded in question - answer form. Further more, learned trial Judge also observed that both the independent panchas as referred to above categorically stated that deceased Raju Moti had been unconscious on the spot. The learned trial Judge also observed that deposition of Kirtilal Jivanlal, who stated that Raju Moti was conscious, but nowhere, it could be established that the dying declaration of the said deceased was noted by any of the Executive Magistrate and that this

state of his mind was so conscious, that deceased was able to make a statement before the Executive Magistrate. The learned trial Judge also observed that even if the contents of Ex.38, is seen, deceased Raju Moti nowhere stated that accused No.2 was driving the said matador nor from the deposition of the complainant - Arjunsinh Devisinh Chauhan at Ex.41, it could be established that the accused No.2 resident of Palanpur was driving the said matador. After referring to the evidence of Arjunsinh Devisinh Chauhan at Ex.41 and Abbaskhan Thakarmiya at Ex.54 both police personnel, the learned trial Judge observed that from the evidence of these two witnesses, it is not established that the investigation was carried out at the spot about the identity of the absconding persons nor none of the witnesses gave description of absconding persons from the matador nor investigation was carried out. According to Investigating Officer – Mahendraprasad Joshi,

at Ex.59 that who was the owner of the said vehicle nor any further investigation was done in this respect or in respect of that accused No.2 and No.2 only was driving the said matador. From the above evidence, the learned trial Judge came to the conclusion that beyond doubt, it could not be established that it was accused No.2 and No.2 only was driving the matador at the relevant juncture. After referring to all the necessary deposition and the documentary evidence as abovestated, the learned trial Judge has taken into consideration other witness like Jhaverbhai Chelabhai, who has not supported the prosecution version for the fact that the accused No.2 was driving the said matador and that too rashly and negligently.

5. So far as ingredients of Sections 307 and 186 of the Indian Penal Code is concerned, learned trial Judge has appreciated the relevant evidence in detail. It is found from

the record that the charges under Sections 307 and 186 of the Indian Penal Code came to be added by the Investigating Agency through a report submitted as late as on 09.08.1999. Again referring to the evidence of the independent witnesses, the learned trial Judge observed that what is proved through the independent evidence is that the bottles of prohibited liquor came to be falling from the truck and there is no evidence that such bottles were thrown on the police personnel with criminal intention. Neither deceased – Raju Moti, who gave dying declaration nor any other witnesses stated that in fact, out of three persons alleged to have been in the matador were throwing the bottles of the liquor with criminal intention, so as to establish charge under Section 307 of the Indian Penal Code. The learned trial Judge referred to the contradiction that the version of the prosecution appearing is as soon as matador was stopped and injured Raju

Moti was found, he was unconscious and, therefore, the question of the names of the other absconding accused did not arise. In this regard, the learned trial Judge has referred to the evidence and deposition of witnesses Raghnathbhai Shankarji at Ex.29 and Bhalchandbhai Laxmanbhai at Ex.41, who stated that they did not know the absconders before the incident. Even referring to the evidence of the complainant as recorded at Ex.45, who stated that the bottles which were thrown which did not reach up to the vehicle. According to the learned trial Judge, indicated the fact that the prosecution failed to prove that the accused were throwing the liquor bottles on police vehicle with criminal intention to cause injury to police personnel. The fact that to detain the vehicle, Deesa Police Station was informed, stands falsified by the evidence of P.I.Shri Joshi, who was discharging his duty at Deesa Police Station at the relevant

juncture. Even panchnama, which was drawn did not disclose that how much quantity of liquor bottles were in the matador and in how much quantity of the said bottles were thrown on the road. Therefore, from all these evidence, the learned trial Judge, after appreciating the said evidence, came to the conclusion that the prosecution witnesses did not disclose in the manner the incident might have taken place and, therefore, both the accused came to be acquitted.

6. Learned APP Mr.K.C.Shah for the appellant – State vehemently opposed the judgment and order impugned in this appeal, after referring to the evidence of various witnesses and documentary evidence.

7. Needless it is to say that in acquittal appeal, the High Court possesses some powers to appreciate the evidence as in the appeals against the order of conviction. The High Court can assess, re-appreciate the evidence recorded during the trial and make out its

own conclusion. That conclusion may be deferring to the conclusion drawn by the trial Court. Therefore, it becomes the duty of the High Court to go through each reasoning given by the trial Court for acquittal and give reasons as to how the reasoning given by the learned trial Judge are perverse and against recorded evidence. Needless, it is also to observe that the established view is merely because the second view is possible from the evidence recorded and appreciated that itself may not be a cause to justify interference. In the reasoning given by the trial Court for acquittal, unless and until, it apparently appears that the reasons given by the trial Court for acquittal would not stand to reason and perverse to the extent causing miscarriage of justice, there should be no interference.

8. In view of the above, with the assistance of learned APP, we have gone through the

evidence recorded by the trial Court of the witnesses 20 in numbers and the documentary evidence to form our own independent conclusion. While appreciating the evidence on record as disclosed during trial especially of independent witnesses i.e. two panchas and the complainant for the reasons stated by the trial Judge, it appears to us as well that no other view is possible to the appreciation of the collection of the testimonies and the documents produced and the view taken by the learned trial Judge that it could not be established beyond reasonable doubt by the prosecution that at the relevant juncture, accused No.2 was driving the matador and that both the accused had absconded from the spot, as per the information given by the deceased Raju Moti is not exceptionable. In this respect, there is contradictory evidence of dying declaration and other witnesses of the prosecution as discussed above. Likewise, the

evidence falls short to bring home the guilt of the accused so far as their intention to cause injury to police personnel by throwing bottles of liquor from the matador. This is also amply discussed by the learned trial Judge and we have independently assessed the evidence of the prosecution in this respect and as above said even from the evidence of the complainant and independent witnesses, it could not be established by the prosecution beyond doubt that the present accused and present accused only were throwing liquor bottles from the matador willfully so as to cause injuries to the police personnel. The learned trial Judge has come to right conclusion after appreciating the evidence on record. The manner of appreciation undertaken by the trial Judge cannot be impeached on the ground that the view and only view which was possible, was of the guilt of the accused, nor extraneous material, except material produced on

record, the evidence was considered by the trial Judge in appreciating the evidence. Consequently, we do not find any grounds to discard the reason given by the trial Judge for acquittal so as label them as perverse. The interference, therefore, in the order of acquittal would not be justified in our humble view.

9. In the result, this appeal stands dismissed.

[J. R. VORA,J.]

[SHARAD D. DAVE,J.]

(vijay)